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SUMMARY OF CASES

RELATING TO

FARMERS' COOPERATIVE ASSOCIATIONS

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Prepared under the direction of

L. S. Hulbert

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COOPERATIVE RESEARCH AND SERVICE DIVISION

Summary No. 12 December 1941

FARM CREDIT ADMINISTRATION

A. G. Black - Governor

Cooperative Research and Service Division

T. G. Stitts - Chief

W. W. Fetrow - Associate Chief

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Cases involving and affecting the legal status and operations of cooperative associations are being decided by the courts from time to time. In order to assist attorneys for cooperative associations, and others concerned with such associations, in obtaining current information regarding legal questions affecting their organization and operations, summaries such as this are issued quarterly. Requests to be placed on the mailing list to receive issues of this publication should be made to T. G. Stitts, Chief, Cooperative Research and Service Division, Washington, D. C.

SUMMARY OF CASES RELATING TO FARMERS' COOPERATIVE ASSOCIATIONS

CONTENTS

Members And Nonmembers Must Have Ratable Interests In Reserves If Association Is To Be Eligible For Exemption From Federal Income Taxes

The Circuit Court of Appeals for the Eighth Circuit, in Fertile Co-operative Dairy Ass'n v. Huston, 119 F.2d 274, affirmed the opinion of the lower court, 33 F.Supp. 712, which was summarized in Summary No. 8, beginning on page 1. The Circuit Court of Appeals said in part:

> The question presented is whether the business of a farmers' co-operative marketing association was being conducted in such a manner as to entitle it to tax exemption under section 101 of the Revenue Acts of 1936 and 1938, 26 U.S.C.A. Int. Rev. Code, § 101.
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> The Commissioner of Internal Revenue denied the association's claim for exemption and its subsequent claims for refunds, and it then brought suit under 28 U.S.C.A. § 41, to recover the amount of income, excess profits, and capital stock taxes which it had been obliged to pay for the years 1936 to 1939, inclusive. The District Court held that the association was not exempt from the payment of such taxes, because it had failed to accord nonmember patrons equal treatment with its members, and dismissed the action. The association has appealed.
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> The Revenue Acts involved provided that such an association should not be denied tax exemption simply "because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose." Article 101(12)-1 of Treasury Regulations 94, promulgated under these Revenue Acts, also provided that "The accumulation and maintenance of a reserve required by State statute, or the accumulation and maintenance of a reasonable reserve or surplus for any necessary purpose, such as to provide for the erection of buildings and facilities required in business or for the purchase and installment of machinery and equipment or to retire indebtedness incurred for such purposes, will not destroy the exemption."
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> The association contends that the additions which it made to its surplus and its expenditures for plant equipment during the period involved were reasonable and necessary, and under the provisions of the statute and the treasury regulations, would not defeat its right to tax exemption. The burden of course would rest on the association to establish, by direct evidence or by evidence from which it was soundly inferable,

that any reserve or surplus which it had set up and any expenditures for additional equipment which it had made were reasonable and necessary in the situation. Welch v. Helvering, 290 U.S. 111, 54 S.Ct. 8, 78 L.Ed. 212. The proof before us is not very satisfactory in this respect, but the matter is in any event not controlling here, so it need not be further discussed.

Even if it had been incontrovertibly established that the surplus apportionment and equipment expenditures in question were reasonable and necessary, they would still have to involve an equality of treatment, as between nonmember and member patrons. The provision in the revenue act authorizing a reasonable reserve to be set up and maintained for any necessary purpose, and the treasury regulations construing the term "necessary purpose" to include the erection of buildings and other facilities, the purchase and installation of machinery and equipment, and the retirement of any indebtedness incurred for such purposes, were not intended as a waiver in any respect of that equality of treatment which is part of the necessary foundation for the tax exemption. Unless the business of nonmember patrons is being handled wholly on a non-profit basis, the equality of treatment necessary for tax exemption obviously does not exist. Farmers Union Cooperative Co. v. Commissioner of Internal Revenue, 8 Cir., 90 F.2d 488. If part of the proceeds of nonmembers' products is to be used to create or maintain a surplus and to make additions to the capital assets of the association, without allowing them a proportionate distributive interest in the permanent value contributed by such surplus accumulations or capital assets additions, it must be held that the association to that extent is being operated for profit to its members, as against nonmember patrons, and that it is not exempt from taxation.

The business of nonmembers may of course properly be made to carry its just share of operating expenses, actual depreciation of plant and equipment, and dividends on existing capital stock recognized by the revenue acts. But, if such business is also to be forced to bear part of the burden of accumulating other permissible surplus, and of making reasonable and necessary additions to what constitute or are equivalent to capital assets of the association, it is clear that this must be done in a manner that will permit no profit to inure to association members therefrom, on dissolution or otherwise, or else the association cannot remain exempt from taxation. Provision must at least have been made, by appropriate enabling action on the part of the association and by adequate protective entries on its books and records, for nonmembers in such a

situation as is here involved to share ratably with members, in an ultimate liquidation of the association's assets, on the basis of their comparative contributions thereto.

It may be assumed here that the association would have power under the statutes of Iowa, pursuant to which it was organized, and under its articles of incorporation, to make such a protective recognition in favor of nonmember patrons, on a partial sale or final distribution of its assets, but whether it has such power or not, is not controlling on the question before us. For informational purposes, it may be stated that the association is a nonstock corporation, issuing certificates of membership for fifty cents each to such producers of dairy products as it chooses to admit to membership. It was the successor of another cooperative corporation, whose capital stock it liquidated at par value out of such corporation's assets, and whose plant and equipment it in practical effect received and held as a gift. On any subsequent liquidation of these assets, in part or in whole, after payment of the charges recognized by the statute, Code of Iowa 1939, § 8512.48, distribution would naturally be made on some basis among the members of the association. The sums exacted from nonmember patrons for permanent surplus and capital assets additions, during the period here involved, would constitute part of the assets so distributable, and, as we have previously pointed out, would be equivalent to a profit at the expense of nonmember patrons. This profit and the inequality of treatment resulting to nonmembers therefrom must be regarded as having destroyed the association's right to tax exemption. Farmers Union Co-operative Co. v Commissioner of Internal Revenue, 8 Cir., 90 F.2d 488; Farmers Co-operative Co. v. United States, Ct. Cl., 23 F.Supp. 123; Burr Creamery Corporation v. Commissioner of Internal Revenue, 9 Cir., 62 F.2d 407.

The association relies principally upon Crooks v. Kansas City Hay Dealers' Association, 8 Cir., 37 F.2d 83, but the basis of the court's decision in that case seems to have been that, under the facts in the record, the possibility of any distribution was regarded as contingently remote and wholly speculative. This was particularly true, perhaps, under the stipulation in the record in that case, commented on in Northwestern Jobbers' Credit Bureau v. Commissioner of Internal Revenue, 8 Cir., 37 F.2d 880, that no part of the surplus accumulated could ever inure to the benefit of any member or other individual. Such is not the situation in the present case.

With respect to an association's reserves, in order for the association to meet the test regarding equality of treatment for all patrons, members and nonmembers alike, the nonmembers must be

placed in a position where they could as a matter of right, at least in the event of dissolution or liquidation, be able to require the payment to them of their reserve contributions, assuming such contributions were then on hand. Simply allocating reserves on the books of an association would not in all cases meet this requirement, unless as a matter of law such an allocation results in a legal liability so to distribute such reserves, at least in the event of dissolution or liquidation. Of course, by contracts with nonmembers or by suitable provisions in an association's organization papers, nonmembers could be placed in a position where they could under the circumstances detailed legally require the payment to them of their reserve contributions. Although the point is not expressly discussed in the opinion of the Circuit Court of Appeals it is believed that the court proceeded upon the theory that the reserves which were "contributed" by members and by nonmembers and which were owned by the association were subject to the hazards of the business in which the association was engaged, so that if the reserves were lost no liability therefor would exist.

Patronage Dividends Held Nondeductible In Computing Income Taxes

The Bureau of Internal Revenue declined to permit the Peoples Gin Company, Inc., in computing its income taxes, to deduct the amount of $3,684.70 which it asserted had been distributed to its members as patronage dividends. The deduction was disallowed on the ground that it represented ordinary dividends paid to stockholders and, therefore, did not constitute an allowable deduction.

The taxpayer then brought the question before the Board of Tax Appeals which upheld the Bureau of Internal Revenue. Peoples Gin Company, Inc., v. Commissioner of Internal Revenue, 41 B.T.A. 343. In reaching this conclusion the Board of Tax Appeals pointed out that the Peoples Gin Company, Inc., was organized under the laws of the State of Mississippi as a general business corporation for the purpose of carrying on a public ginning business, and that the organization did not adopt a bylaw providing for the payment of patronage dividends until after the ginning season was over and the earnings for the year in question had been made.

The Peoples Gin Company, Inc., subsequently carried the case to the Circuit Court of Appeals for the Fifth Circuit which affirmed the decision of the Board of Tax Appeals. The opinion of that court [Peoples Gin Co., Inc., v. Commissioner of Internal Revenue, 118 F.2d 72] is here given in full:

> The petitioner, Peoples Gin Company, Inc., a Mississippi corporation, was organized in July, 1933, for the purpose of carrying on a public cotton ginning business. The stock

of the corporation was owned by six farmers, each of whom held fifteen shares. The six stockholders and other cotton farmers patronized the gin, and in the 1933 ginning season the company ginned 2,652 bales of cotton. Of this number 1,794 bales were ginned for stockholders, and 858 bales were ginned for other customers. Without distinction the stockholder and non-stockholder patrons were charged the same ginning fees per bale for the ginning of cotton. The company realized a profit of $5,721.24 from the ginning of the 2,652 bales of cotton in the 1933 season.

On August 9, 1933, shortly after the organization of the Peoples Gin Company, a resolution was adopted providing that a ten per cent dividend should be paid by the corporation before any profits should be "prorated on a baleage basis". On December 8, 1933, after the ginning season had closed, the stockholders held a meeting and adopted by-laws providing that each stockholder should pay the regular ginning fee for the ginning of his cotton; that at the close of the ginning season all profits of the corporation were to be divided among the stockholders in the proportion which the number of bales ginned for them bore to the total number of bales ginned by the company during that season; and that the profits derived from ginnings for non-stockholders were to constitute company profits which were to be divided in proportion to the number of shares held by individual stockholders, "or credited to the surplus and undivided profits account". In May, 1934, before the close of the company's fiscal year, the by-laws were further amended to provide that each year the stockholders would be reimbursed for any amount paid to the ginnery "in excess of the actual cost of ginning his cotton".

It was determined by the gin company that its profit from the ginning of 1,794 bales of cotton for stockholders was $3,684.70, and on January 15, 1934, this amount was prorated and distributed to the six stockholders on the basis of the number of bales ginned for each of them during the ginning season. In its income tax return for the fiscal year ending July 31, 1934, the taxpayer deducted this sum of $3,684.70 from its gross income as a "patronage dividend". The commissioner disallowed the deduction and determined a deficiency in income and excess profits taxes for the year. The taxpayer appealed and the Board of Tax Appeals sustained the commissioner's determination of deficiency. Peoples Gin Company, Inc. v. Commissioner, 41 B.T.A. 343.

The petitioner contends here as it did before the Board that the payment of $3,684.70 to its stockholders was a "patronage dividend", a rebate or refund of excess ginning charges,

and that this sum should have been allowed as a proper deduction from its gross income. In support of this contention it relies upon Treasury Ruling A.R.R. 6976, Cumulative Bulletin June, 1924, P. 287; Uniform Printing & Supply Co. v. Commissioner, 7 Cir., 88 F.2d 75, 109 A.L.R. 966; Fruit Growers' Supply Co. v. Commissioner, 9 Cir., 56 F.2d 90; Riverdale Co-op. Creamery Co. v. Commissioner, 9 Cir., 48 F.2d 711.

This case is different from the cases relied upon by the petitioner. In those cases where the deduction was allowed the obligation to make rebates or refunds was in existence before the profits were earned.

The resolution of August 9, 1933, relative to ten per cent dividend payments did not bind the gin company to make rebates or refunds to stockholders on a baleage basis. Until the adoption of the resolution of December 8, 1933, there was nothing in the corporation by-laws providing for a refund of excess charges to stockholder patrons. The distribution to stockholders which was made on January 15, 1934, was pursuant to the by-laws of December, 1933, which by-laws had been adopted subsequent to the earnings of the profits by the ginnery. When this income was received by the corporation there was no obligation to make refunds or rebates to stockholders. The profits from ginnings for stockholders, therefore, became a part of the gross income of the taxpayer, and the character of this income for tax purposes was not changed by the adoption of subsequent resolutions and by-laws. Cf. Fruit Growers Supply Co. v. Commissioner, 9 Cir., 56 F.2d 90; Brown v. Helvering, 291 U.S. 193, 199, 54 S.Ct. 356, 78 L.Ed. 725; North American Oil Co. v. Burnet, 286 U.S. 417, 424, 52 S.Ct. 613, 76 L.Ed. 1197.

The facts of this case make it clear that the distribution to stockholders was nothing more than a dividend paid out of profits of the corporation. Cleveland Shopping News Co. v. Routzahn, 6 Cir., 89 F.2d 902; Lincoln Nat. Bank v. Burnet, 61 App.D.C. 54, 63 F.2d 131; Hudson v. Commissioner, 6 Cir., 99 F.2d 630.

The Board properly held that the distributed sum of $3,684.70 should be included in the gross income of the petitioner. The decision of the Board is affirmed.

Under certain circumstances the Bureau of Internal Revenue for many years has permitted nonexempt cooperative associations in computing their income taxes to deduct patronage dividends which they have paid in cash. It is believed to be essential, under the practice which the Bureau has followed, that an association be formed to operate on a cooperative basis and that it have bylaws which

show that patronage dividends may be paid. Also, such dividends must at least have been declared within the taxable year even though the actual computations and disbursements are not to be made until after the close of the taxable year. Generally speaking, it would appear that if an association is positively obligated by contracts or by provisions in its bylaws to return on a patronage basis any "excess amounts" which it may have received from its patrons, or to disburse to them on a like basis any amounts arising by reason of "under payments," such amounts should be deductible in computing the income taxes of the organization involved. As a matter of fact, if an association is operating on such a basis and is firmly obligated to its patrons to disburse to them amounts like those just described, without the necessity or occasion for action by its board of directors, such amounts would not appear to be income and therefore would be excludable in computing the income taxes of the organization.

The case of Juneau Dairies, Inc., v. Commissioner of Internal Revenue, 44 B.T.A. 759, might be construed as casting some doubt on the right of an association to deduct or exclude sums like those under discussion. However, in the Juneau case the obligation of the association to pay patronage dividends appeared under the contracts not to be unequivocal.

Cooperative Amenable To Involuntary Bankruptcy Proceedings

The Circuit Court of Appeals for the Seventh Circuit in the case of In re Wisconsin Co-operative Milk Pool, 119 F.2d 999, reversed the decision of the trial court, 35 F.Supp. 787, and held that a cooperative association was amenable to involuntary bankruptcy proceedings. In reversing the trial court it was said:

> Petitioners appeal from a judgment of the District Court to the effect that respondent is not such a corporation as may be adjudged bankrupt. Petitioners had filed an involuntary petition alleging that respondent was a business corporation; that it was indebted to petitioner in sums aggregating some $94,000; that it was insolvent and had committed an act of bankruptcy in that it had made a general assignment for the benefit of its creditors. The sole question presented on review is whether respondent is within Section 4, sub. b of the Bankruptcy Act, 11 U.S.C.A. § 22, sub. b, providing, with certain exceptions not here important, that estates of "moneyed," "business," or "commercial" corporations may be administered in bankruptcy.

After an analysis of the cooperative act of Wisconsin under which the association was organized, the Circuit Court of Appeals concluded that:

> Such corporations differ from others not in corporate function but only in that the profits, instead of being distributed to stockholders, are allotted to patrons ratably in proportion to the amount of business transacted with the latter.

The court then referred to various activities in which the association had been engaged and, inferring that they were business activities, said:

> From the Wisconsin statute and the corporate powers and activities of respondent, it seems clear that it is such a corporation as, under the definition prescribed by the Congress, may be adjudicated bankrupt. Congress has not seen fit to exempt co-operative associations. It has provided that a moneyed, commercial or business corporation may become bankrupt. It has not distinguished between corporations which distribute profits to their stockholders and those which distribute to their patrons. There is nothing in the nature of a co-operative association which conducts business for the purpose of realizing profit for those with whom it does business to remove it from the Congressional definition. While such associations are to be encouraged as instrumentalities looking to aid of their patrons, they are not eleemosynary or charitable organizations. Rather they represent merely a banding together of producers for their common financial advancement. The sole motive is pecuniary gain. Where the chief purpose is, as it is here, to carry on trade or commerce in an established field and to do this primarily for the financial benefit of those who have joined in its organization and in the conduct of its affairs, there seems to us no room for doubt that the corporation is a business or commercial corporation within the intendment of the Bankruptcy Act. Schuster v. Ohio Farmers' Co-op. Milk Ass'n, 6 Cir., 61 F.2d 337; Roumanian Workers Educational Ass'n of America v. Popovich, 6 Cir., 108 F.2d 782; In re South Shore Co-op. Ass'n, D.C., 4 F.Supp. 772.

> Schuster v. Ohio Farmers' Co-op. Milk Ass'n, 6 Cir., 61 F.2d 337, was decided prior to the recent amendment of the Bankruptcy Act. The court there commented upon the failure of Congress to exclude co-operatives from the operation of the act. With this decision before it, Congress did not see fit to reframe its definition so as to exclude co-operatives. It must be presumed that the legislative body approved the judicial construction given its prior legislation of substantially the same purport.

It is said that it is the public policy both in the state and nation to promote and nurture the development of co-operatives and that to hold them subject to bankruptcy is to interfere with such public policy. The reasoning is fallacious. To hold a corporation amenable to bankruptcy is not in any wise to interfere with its activities as a useful association or to penalize it. The Bankruptcy Act is remedial legislation. Its excuse for existence lies in the underlying theory that in the absence of bankruptcy the diligent creditor may lay hold of all assets to the detriment of others. For the old legal maxim that, to the diligent belongs the reward, it has supplied a new one, -- equality is equity. Its purpose is to see that the assets of an insolvent may be divided ratably amongst its creditors and to make it impossible for one or more favored creditors to seize everything in sight. Respondent has invoked the laws of Wisconsin for liquidation, in the form of an assignment for the benefit of creditors. There is no reason in existing public policy why the administration and distribution of its assets should not be had in a court of equity where preferences are abhorred rather than in a state insolvency proceedings, where their validity is recognized. This is not penalization of a co-operative. It is merely application of the remedial, equitable purposes of bankruptcy legislation in liquidation.

It is likewise urged that the statutes of Wisconsin indicate that the liquidation of such a corporation is to be left to the state courts and that it was the purpose of Congress to allow the state policy to persist. The argument falls when we remember that paramount bankruptcy power is, under the Constitution, lodged in the Congress; that its enactment is nation-wide in effect and supersedes any state statute interfering therewith.

The power to determine whether one may be bankrupt and what relief may be granted to him and to his creditors lies with Congress, and any state legislation interfering with the same must give way before that paramount authority. The state can not determine who shall be admitted to bankruptcy; that is the function of Congress. We can only inquire whether a corporation, whose powers are defined by the state statute, comes within the Congressional definition of those who may be declared bankrupts. Thus far and thus far only may we have reference to the Wisconsin statutes and to the articles of incorporation. State laws create legal interests. Federal legislation, in pursuance of the Constitution, determines whether an interest or right created by local law is within the federal law. The latter must prevail no matter

> what name is given the interest or right by the local law. Morgan v. Commissioner, 309 U.S. 78 and 81, 60 S.Ct. 424, 84 L.Ed. 585. Our examination of the record convinces us that this corporation, under the Wisconsin statutes, possessed the powers of a business, commercial and moneyed corporation and that, therefore, it is within the Congressional definition of those whose estates may be administered in bankruptcy.

The conclusion reached by the court in this case is similar to that reached by the Circuit Court of Appeals for the Sixth Circuit in the case of Schuster v. Ohio Farmers' Co-op. Milk Ass'n, 61 F. 2d 337, in which a U.S. District Court was reversed.

In the case of In re South Shore Co-op. Ass'n, 4 F.Supp. 772, a Federal trial court held that an agricultural cooperative association was amenable to involuntary bankruptcy proceedings. See also In re Wyoming Valley Cooperative Association, 198 F. 436, and In re Sedalia Farmers' Co-operative Packing and Produce Company, 268 F. 898.

In the cases of In re Dairy Marketing Association of Ft. Wayne, Inc., 8 F.2d 626, and In re Weeks Poultry Community, Inc., 51 F.2d 122, the respective U.S. District Courts held that agricultural cooperative associations were not amenable to involuntary bankruptcy proceedings.

Amendment to Bylaws Held Invalid

In the case of Tapo Citrus Association v. Casey, 115 P.2d 203, decided by a District Court of Appeal of California, the question presented was whether an amendment to the association's bylaws purporting to change the period within which a member might withdraw from the association from "the month of October" to the "first week in September" of each year was valid.

The provision of the articles of incorporation of the association with respect to the voting power of members was as follows:

> Each member shall have one vote at all annual and special meetings of the members for each $10.00, or major fraction thereof, paid by him to the revolving fund, . . . less all payments made to him from said revolving fund.

The court found that the bylaws of the association at the time the defendant became a member and at all times thereafter provided

> that at each meeting of the members each member shall be entitled to vote in person or by proxy held by some member

or members present at such meeting and made in accordance with the laws of the state of California, and shall have one vote for each $10 or major fraction thereof paid by him to the revolving fund; that all questions except the election of directors and any questions, the manner of deciding which is specially regulated by law, shall be determined by a majority of the members; provided, that any member may demand a representative vote and in that case such representative vote shall immediately be taken and each member shall be entitled to one vote for each $10 or major portion thereof paid by him to the revolving fund.

The opinion of the court continued:

> . . . On January 4, 1938, at the regular annual meeting of the members of plaintiff Association, in lieu of an oral resolution and voice vote to amend article I, section 8, members holding a majority of the voting rights, 2419 votes out of a total of 3350 votes according to the next preceding priority schedule of funds paid in by the members to the revolving fund, executed a written assent, by the terms of which said article I, section 8 of the by-laws of said Association was amended to provide that any member might withdraw from the Association only during the first week of September of any year. The members who executed said written assent were less than a majority in number of the members of said Association. On February 19, 1938, a written notice of said assent of the members to amend said bylaws of said plaintiff Association was mailed to each and all of the members of said Association, including the defendant, as the address of each member appeared upon the books of plaintiff Association. In said notice specific attention was directed to defendant and each and all of the other members of the plaintiff Association that on January 4, 1938, said by-law had been amended as to the date of permissible withdrawal of any member from "the month of October" as theretofore provided, to "the first week of September" of each year.
>
> On October 29, 1938, after the adoption of said amendment of said by-law and notice thereof given to the defendant, defendant notified plaintiff Association in writing of his withdrawal from the plaintiff Association. On the same day plaintiff Association notified defendant in writing acknowledging defendant's notice of withdrawal, directing defendant's attention to the change in the by-laws as to the time within which withdrawals would be permitted, directing defendant's attention to notice of change in the Association's by-laws dated February 19, 1938, and notifying defendant that his notice of withdrawal had been presented too late, was invalid and ineffective, and was not accepted by the plaintiff Association.

After giving the notice of withdrawal, the defendant entered into an agreement with another cooperative marketing association by which he agreed to deliver all oranges grown by him to this association. The Tapo association then brought the subject proceeding to enjoin the defendant from delivering his fruit to the second association and for the purpose of requiring him to perform specifically the terms of his contract with the Tapo association. The grower defended by contending that his notice of withdrawal which had been given on October 29, 1938, was valid and that the bylaw amendment which purported to change the withdrawal period from the month of October to the first week in September of each year was invalid.

In holding that the bylaw amendment was invalid the court said in part:

> When either the general law or the charter of the Association prescribes the mode in which by-laws may be adopted, the by-laws which the Association seeks to make must of course be adopted in such mode in order to be valid, and the same proposition holds true with amendments. At the time of the attempted amendment of the by-laws in question, section 1200 of the Agricultural Code, St. 1933, p. 257, provided: "Each association shall within thirty days after its incorporation, adopt for its government and management, a code of by-laws, not inconsistent with this chapter. A majority vote of the members or shares of stock issued and outstanding and entitled to vote, or the written assent of a majority of the members or of stockholders representing a majority of all the shares of stock issued and outstanding and entitled to vote, is necessary to adopt such by-laws and is effectual to repeal or amend any by-laws, or to adopt additional by-laws."
>
> Plaintiff Association contends that the language of said section 1200 of the Agricultural Code "is ambiguous or at least amphibolous". It asks: "Does this language mean that a non-profit co-operative marketing association, without capital stock or shares of stock but whose articles and by-laws provide for unequal voting in its various members, can only amend its by-laws by vote or written assent of a majority in number of its members, or does it mean that a majority vote or written assent of its members entitled to vote -- a majority of the voting power of its members -- may amend its by-laws?" We would answer this by saying that the object of section 1200 of the Agricultural Code is to provide a mode of amendment for both classes of associations, those with and those without shares of stock. In the case of plaintiff Association, which

has no shares of stock, we think the mode of amending the by-laws as authorized by section 1200 of the Agricultural Code is by vote or written assent of a majority in number of its members.

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According to section 1200 of the Agricultural Code, as we have said, the mode of amendment would be by vote or written assent of a majority in number, of members. In this case, since written assent was given by less than a majority in number of members, the attempted amendment must be held to be invalid.

As shown in the quotations just given the court held that under the statute of California the bylaws of the association could be changed only by the vote or the written assent of a numerical majority of the members of the association.

In the case of Taresh v. California Canning Peach Growers, 3 Calif. 2d 686, 45 P.2d 964, the court held that a withdrawal notice received by the association one day before the beginning of the period specified in the marketing agreement of the association within which members might give notice of withdrawal was legally effective. The court laid some stress upon the fact that the association had retained the notice in its files.

Cooperative Charged With Violation of Robinson-Patman Act

The Federal Trade Commission issued the following statement for release to the press on November 21, 1941:

Cranberry Canners, Inc., South Hanson, Mass., in a complaint issued by the Federal Trade Commission, is charged with violation of the Robinson-Patman Act.

The complaint alleges that the respondent contracted to pay and paid four of its competing Philadelphia customers certain sums in consideration for advertising services furnished in connection with the sale of the respondent's cranberry sauce, without making such payments available on proportionally equal terms to such customers, and without making available such payments on any terms whatever to other customers competitively engaged with those granted the allowances. This practice, according to the complaint violates Section 2 (d) of the Robinson-Patman Act.

According to the complaint, the respondent paid a Philadelphia grocery company $228 or 3.8 cents per case which it purchased from the respondent during 1940 as payment for advertising services in connection with the sale of the respondent's cranberry sauce under its private brand name; paid another Philadelphia firm $195.70 or 4.9 cents per case for the same year for services in connection with advertising the respondent's sauce under its own brand name; and paid a third firm $240 or 6 cents a case and a fourth firm $300 or 6 cents a case for such services while other Philadelphia jobber customers of the respondent purchasing large quantities of its sauce and selling it under their own brand names, did not receive any payment for advertising allowances.

The complaint grants the respondent 20 days for filing answer.